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8

9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 BRAD D. BRINSON, an individual;

Case No.: 22-cv-09076-JCS

12 Plaintiff,

13 **PLAINTIFF'S OPENING BRIEF RE:**
DISCOVERY AND STANDARD OF
REVIEW

14
15 MERRICK B. GARLAND, in his official
capacity as Attorney General of the United
16 States; ROB BONTA, in his official capacity as
Attorney General of the State of California; and
17 DOES 1-10

Hearing Date: May 16, 2024
Hearing Time: 10 a.m.
Courtroom: 8
Judge: Hon. Jacqueline Scott Corley

18 Defendants.

Action Filed: December 22, 2022

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INTRODUCTION

On February 14, 2024, this court issued an order following an initial case management conference regarding discovery and the applicable standard of review. The order noted that, after reviewing the pleadings and the court’s order denying Defendant Garland’s motion to dismiss, neither the parties nor the Court had addressed whether the government may supplement the administrative record by conducting discovery in an action under 18 U.S.C. § 925A. Nor had the parties addressed the standard of review. In response to this order, the parties filed a joint case management statement on February 28, 2024, and another case management conference was held. At the second case management conference, the Court revealed that it was inclined to allow Garland to conduct discovery under *United States v. Hayes*, 555 U.S. 415 (2009), but would allow Plaintiff Brinson to brief the issue before deciding.

This Court should deny Garland’s request. The issue of Brinson’s relationship in the predicate offense was expressly decided by his 1997 criminal conviction, and no amount of supplementing the record three decades later can alter that judicially established finding of fact. Under existing Supreme Court and Ninth Circuit precedents, including the Supreme Court’s decision in *Hayes*, Garland has no right to leave to conduct unnecessary and costly discovery in an action under 18 U.S.C. § 925A. What’s more, Garland is barred by res judicata and collateral estoppel from re-litigating the issue of Brinson’s relationship with his alleged victim here. Finally, because there is no genuine dispute of material fact about Brinson’s relationship in the predicate offense, Brinson hereby moves for summary judgment on his claim that his attempted firearm purchase was unlawfully denied under 18 U.S.C. § 925A.

STATEMENT OF FACTS

In 1997, Plaintiff Brad Brinson was charged with and pleaded to a misdemeanor violation of California Penal Code section 243(e). Compl. ¶ 31. At the time of Brinson’s conviction, the law criminalized battery “against a spouse, person with whom the defendant is cohabitating, person who is the parent of the defendant’s child, noncohabitating former spouse, fiancé, fiancée, or a person with whom the defendant currently has, or has previously had, a *dating relationship*,” Cal. Penal Code § 243(e). The criminal complaint identified the alleged victim and expressly noted that she was involved in a “*dating relationship*” with Brinson. *Id.*; see also Compl. ¶ 31 & Ex. A, at 6-7 (email from Assistant General Counsel William Finch finding that Brinson’s relationship to the victim, as a matter of fact and

1 law, is and was a dating relationship”).

2 Under 18 U.S.C. § 922(g)(9), any person convicted of a “misdemeanor crime of domestic
3 violence” is barred from possessing firearms for life. At the time of Brinson’s conviction, however,
4 federal law defined a “misdemeanor crime of domestic violence” as an offense that:

5 [H]as, as an element, the use or attempted use of physical force, or the
6 threatened use of a deadly weapon, committed by a current or former spouse,
7 parent, or guardian of the victim, by a person with whom the victim shares a
8 child in common, by a person who is cohabitating with or has cohabitated with
the victim as a spouse, parent, or guardian, or by a person similarly situated to
a spouse, parent, or guardian of the victim.

9 18 U.S.C. § 921(a)(33)(A)(ii) (amended June 25, 2022). The federal definition did not then include—and
10 was not intended to include—dating relationships like the one that, “as a matter of fact and law,” Brinson
11 shared with the alleged victim. Indeed, at the time of Brinson’s conviction, a dating relationship was
12 insufficient grounds for a misdemeanor crime of domestic violence and thus did not trigger the firearm
13 restrictions of 18 U.S.C. § 922(g)(9). *United States v. Nobriga*, 408 F.3d 1178, 1183 (9th Cir. 2005).

14 In 2014, Brinson tried to buy a firearm lawfully but was denied. Compl. ¶¶ 3, 33; *see id.* Ex. A.
15 He was later informed that his attempted purchase was denied because his 1997 conviction had been
16 labeled a “misdemeanor crime of domestic violence” under section 922(g)(9). *Id.* Brinson retained
17 counsel who contacted both Deputy Attorney General Kimberly Granger of the California Department of
18 Justice and Assistant General Counsel William Finch from the Office of the General Counsel of the
19 Federal Bureau of Investigation. *Id.* ¶ 34, Ex. A. In his correspondence with both Ms. Granger and Mr.
20 Finch, counsel for Brinson expressly cited the effect of *United States v. Hayes*, 555 U.S. 415 (2009) to
21 Brinson’s circumstances, reasoning that:

22 [B]ecause the District Attorney pled and proved, by Mr. Brinson’s Nolo
23 Contendere plea to Count 1, only a dating relationship as defined in PC
24 243(f)(11) rather than a relationship as set forth in 18 U.S.C.
921(a)(33)(A)(ii), and because the nature of the relationship between Ms.
25 Wacholz and Mr. Brinson was established in the court record and is now res
judicata, no extrinsic evidence may be considered (*United States v. Hayes*
(2009) 555 U.S. 415).

26 Compl. Ex. A, at 5-7 (email to Ms. Granger referencing communication with Mr. Finch that provided
27 identical analysis).

28 Mr. Finch agreed with that assessment. Compl. ¶ 35, Ex. A, at 6-7. Having reviewed all the

1 materials that counsel provided, he concluded that Brinson “is not federally prohibited by his August 21,
 2 1997 conviction” and that “*the factual and legal parameters of his case are established by that*
 3 *conviction,*” including the fact that Brinson’s “relationship to the victim, as a matter of law and fact, is
 4 and was a dating relationship.” *Id.* (emphasis added). “The police report cannot invalidate those judicially
 5 established findings for purposes of the Brady Act.” *Id.* Ex. A, at 7. Mr. Finch thus advised that Brinson’s
 6 relationship to the alleged victim “does not qualify the conviction as a misdemeanor crime of domestic
 7 violence under 18 U.S.C. 922(g)(9) and 921(a)(33), the police report notwithstanding.” *Id.* Ex. A, at 6.

8 Brinson’s attorney forwarded Mr. Finch’s determination to Ms. Granger, reiterating that
 9 Brinson’s relationship with the alleged victim was a dating relationship and that “because the nature of
 10 the relationship between [the victim] and Mr. Brinson was established in the court record and is now res
 11 judicata, no extrinsic evidence may be considered.” *Id.* ¶ 36, Ex. A, at 5-6. Ms. Granger tried to verify
 12 Mr. Finch’s determination but learned that he had retired. *Id.* ¶ 37, Ex. A, at 5. Ms. Granger thus
 13 consulted a second FBI attorney, Mr. Drew Crislip, on the matter. *Id.* She later confirmed that Mr. Crislip
 14 “agreed with Mr. Finch’s determination” and that because Brinson’s prohibition was limited to a federal
 15 issue, he could reapply for a gun purchase. *Id.* ¶ 38, Ex. A, at 3.

16 Following the 2014 communications with Ms. Granger, Brinson lawfully purchased firearms and
 17 ammunition without issue for years. *Id.* ¶ 39, Ex. A, at 2. But on November 23, 2018, he was once again
 18 denied an attempted firearm purchase. *Id.* ¶ 40, Ex. A, at 2. Brinson was informed that his 1997
 19 conviction was again being labeled a “misdemeanor crime of domestic violence,” and he was thus barred
 20 under 18 U.S.C. 922(g)(9) from owning or possessing firearms. *Id.* Brinson’s counsel thus contacted
 21 Deputy Attorney General Robert Wilson, Ms. Granger’s successor, and included a copy of his earlier
 22 correspondence with Ms. Granger. *Id.* ¶ 41, Ex. A. Brinson’s counsel also appealed the denial to the
 23 FBI’s Voluntary Appeal File unit. *See id.* Ex. D. On July 12, 2022, the VAF unit concluded that
 24 Brinson’s prior conviction resulted in a “misdemeanor crime of domestic violence” prohibition under
 25 section 922(g)(9). *Id.* Unable to resolve the issue after exhausting all possible administrative remedies,
 26 Brinson filed this lawsuit.

27 Long after the events giving rise to this action, the federal definition of “misdemeanor crime of
 28 domestic violence” was amended in 2022 to include persons who had “a current or recent former dating

1 relationship with the victim.” Bipartisan Safer Communities Act, Pub. L. No. 117-159, § 12005, 136 Stat.
 2 1313, 1332 (2022) (codified at 18 U.S.C. § 921(a)(33)(A)(ii)). As used here, the term “dating
 3 relationship” is defined as “a relationship between individuals who have or have recently had a
 4 continuing serious relationship of a romantic or intimate nature.” 18 U.S.C. § 921(a)(37)(A). The new
 5 definition also provides guidelines for determining whether a relationship is a “dating relationship” under
 6 federal law, including consideration of (1) the length of the relationship, (2) the nature of the relationship,
 7 and (3) the frequency and type of interaction between the individuals involved in the relationship. *Id.* §
 8 921(a)(37)(B).

9 A person convicted of an offense that qualifies as a “misdemeanor crime of domestic violence”
 10 based on a “dating relationship” under the new federal definition *are not prohibited from owning or*
 11 *possessing firearms for life*. They are instead subject to a *five-year* ban as long as they have no more than
 12 one such conviction and are not otherwise prohibited. *Id.* § 921(a)(33)(C).¹ Importantly, the new federal
 13 definition is not retroactive; it does “not apply to any conviction of a misdemeanor crime of domestic
 14 violence entered before the date of enactment of th[e Bipartisan Safer Communities] Act.” Pub. L. No.
 15 117-159, § 12005, 136 Stat. 1313, 1332.

16 ARGUMENT

17 I. THE NATURE OF BRINSON’S RELATIONSHIP TO THE ALLEGED VICTIM WAS ESTABLISHED BY 18 THE 1997 CONVICTION; IT DOES NOT TRIGGER A MISDEMEANOR CRIME OF DOMESTIC 19 VIOLENCE PROHIBITION

20 The 1997 criminal complaint to which Brinson pled nolo contendere refers to Brinson’s
 21 relationship with the alleged victim only as a “dating relationship,” Compl. ¶ 31, Ex. A, at 5-7,
 22 precluding any other relationship type described in section 243(e)(1), *see id.* Ex. A, at 6-7. This includes
 23 those that could be construed as a spouse, *cohabitant*, parent of a child in common, noncohabitating
 24 former spouse, fiancé, or fiancée. As noted above, a “misdemeanor crime of domestic violence” was
 25 defined under federal law at the time of Brinson’s conviction as a misdemeanor involving the use of force

26
 27 ¹ “[I]n the case of a person who has not more than 1 conviction of a misdemeanor crime of
 28 domestic violence against an individual in a dating relationship, and is not otherwise prohibited under
 this chapter, the person shall not be disqualified from shipping, transport, possession, receipt, or purchase
 of a firearm under this chapter if 5 years have elapsed.” 18 U.S.C. § 921(a)(33)(C).

1 against *only*: (1) “a current or former spouse, parent, or guardian of the victim”; (2) “a person with whom
 2 the victim shares a child in common”; (3) “a person who is cohabitating with or has cohabitated with the
 3 victim as a spouse, parent, or guardian”; or (4) “a person similarly situated to a spouse, parent, or
 4 guardian of the victim.” 18 U.S.C. § 921(a)(33)(A)(ii) (amended June 25, 2022). It did not apply to those
 5 in “dating relationships” with their alleged victims. As such, both Mr. Finch and Mr. Crislip determined
 6 in 2014 that Brinson’s relationship with the alleged victim “does not qualify the conviction as a
 7 misdemeanor crime of domestic violence under 18 U.S.C. 922(g)(9) and 921(a)(33),” regardless of any
 8 unsubstantiated claims about the nature of the relationship found in the police report. *Id.* Ex. A, at 6.

9 Even so, based on those same unsubstantiated claims, Garland argued in his motion to dismiss
 10 that Brinson had “formally lived with the victim for one year,” making them former cohabitants—a
 11 relationship that does trigger the federal firearm restriction. Def. Garland’s Mot. to Dismiss 3. And
 12 because this Court already ruled that Garland “cannot rely on hearsay reports to support the conclusion of
 13 ineligibility as a matter of law,” Order Re Def. Garland’s Mot. to Dismiss 8, he now relies on those
 14 hearsay reports to justify leave to conduct an unnecessary hunt for extrinsic evidence of the nature of
 15 Brinson’s relationship with the alleged victim. But again, “the factual and legal parameters of his case are
 16 established by th[e 1997] conviction,” including the fact that Brinson was in a “dating relationship” with
 17 the alleged victim. Compl. Ex. A, at 6. “The police report cannot invalidate those judicially established
 18 findings....” *Id.* Ex. A, at 7. Nor could whatever new evidence Garland might dig up nearly 30 years
 19 later.

20 In short, the nature of Brinson’s relationship to the alleged victim was expressly established by
 21 his 1997 conviction to be a “dating relationship.” That conviction sets the “factual and legal parameters”
 22 of this case. And it does not trigger a misdemeanor crime of domestic violence firearm prohibition. At
 23 best, Brinson’s conviction would fall under the “dating relationship” category of misdemeanor crimes of
 24 domestic violence only now recognized by 18 U.S.C. § 922(g)(9). But that category of predicate offense
 25 does “not apply to any conviction . . . entered before the date of enactment of the [Bipartisan Safer
 26 Communities] Act” in 2022. Pub. L. No. 117-159, § 12005, 136 Stat. 1313, 1332. Even if it did apply, it
 27 results in just a five-year prohibition following a conviction, not a lifetime ban. 18 U.S.C. §
 28 921(a)(33)(C). As Brinson was convicted in 1997, more than two decades elapsed between Brinson’s

1 conviction and the 2018 firearm purchase denial at issue. There is thus no legal justification to prohibit
 2 Brinson from owning or possessing firearms under 18 U.S.C. §922(g)(9).

3 **II. UNDER EXISTING PRECEDENT, GARLAND IS NOT ENTITLED TO CONDUCT DISCOVERY
 4 BECAUSE THE RELEVANT INQUIRY IS LIMITED TO THE FACTS AND DOCUMENTS THAT ARE
 5 ALREADY INCLUDED IN THE RECORD**

6 When deciding whether a past state court conviction triggers a related federal restriction,
 7 including the firearm prohibition for persons convicted of misdemeanor crimes of domestic violence
 8 under 18 U.S.C. § 922(g)(9), courts use a “categorical approach,” which compares the elements of the
 9 underlying state conviction with elements of the related federal statute. *Descamps v. United States*, 570
 10 U.S. 254, 257 (2013). Under the “formal categorical approach,” courts look to the statutory elements of
 11 defendants’ predicate offenses but not “to the particular facts underlying those convictions.” *Id.* at 260-61
 12 (citing *Taylor v. United States*, 495 U.S. 575, 600 (1990)).² There is, however, a “narrow range of cases”
 13 subject to a “modified categorical approach,” under which courts may look beyond the statutory
 14 elements, but even then, they look only to a narrow category of extrinsic evidence, including “the
 15 charging paper and jury instructions.” *Id.* at 261. Lower courts resort to this “modified” approach when
 16 the underlying state-law offense includes alternative elements, not all of which would trigger the relevant
 17 federal statute. *Id.* at 261-62.

18 Such was the case in *United States v. Hayes*, 555 U.S. 415 (2009), where the Supreme Court ruled
 19 “that a domestic relationship, although it must be established beyond a reasonable doubt in a 922(g)(9)
 20 firearms possession prosecution, need not be a defining element of the predicate [state law] offense” in
 21 order to constitute a misdemeanor crime of domestic violence under federal law. 555 U.S. 415, 418
 22 (2009) (discussing Gun Control Act of 1968, 18 U.S.C. § 921 et seq.). In other words, the Court held that
 23 the state law describing the predicate offense need not “include, as a discrete element, the existence of a
 24 domestic relationship between the offender and victim.” *Id.* at 420. But “[t]o obtain a conviction in

25
 26 ² See also *United States v. Chatman*, 869 F.2d 525, 529 (9th Cir. 1989) (noting that when
 27 Congress uses a common law term in a federal criminal statute without otherwise defining it, Congress is
 28 presumed to adopt the meaning given that term at common law, and that treatment of prior convictions
 other than categorically would involve the sentencing federal court in a series of “ad hoc mini-trials” long
 after the events in issue had passed).

1 a § 922(g)(9) prosecution,” the government must prove “that the victim of the predicate offense was the
 2 defendant’s current or former spouse or was related to the defendant in another specified way.” *Id.* at 426.
 3 In the context of a prosecution under section 922(g)(9), then, the factfinder might have to look beyond
 4 the four corners of the underlying state statute to decide whether the predicate offense triggers a section
 5 922(g)(9) restriction.

6 But that limited holding does not support a claim for the wholesale importation of any extrinsic
 7 evidence about the nature of the domestic relationship—especially evidence that would contradict
 8 relevant judicially established findings of fact. Again, Brinson was convicted of a violation of Penal Code
 9 section 243 on the grounds that he was in a “dating relationship” with the alleged victim, not some other
 10 type of domestic relationship. Compl. ¶ 31. That finding is settled as a matter of both fact and law. *See*
 11 *supra* Part I. At the time of Brinson’s conviction, “dating relationships” were not included among the
 12 types of domestic relationships recognized in 18 U.S.C. § 921(a)(33)(A)(ii) on its face. As such, *Taylor*
 13 and *Descamps* demand the application of the “formal categorical approach” in deciding whether
 14 Brinson’s criminal conviction qualifies as a “misdemeanor crime of domestic violence” under 18 U.S.C.
 15 § 922(g)(9); it does not.

16 Even if this court were to apply the “modified categorical approach” applied in *Hayes*, however,
 17 the result is the same. The modified approach does not authorize the government to conduct discovery,³
 18 and the limited extrinsic evidence and judicially decided facts that *may* be referenced do not establish that
 19 Brinson’s conviction qualified as a federal “misdemeanor crime of domestic violence” when it was
 20 entered. That is because, even though *Hayes* authorized courts to look beyond the elements of the
 21 underlying state offense, it did not disturb preexisting precedent on what sorts of extrinsic evidence the
 22 courts may look to when deciding whether the federal prohibition applies.

23 Reviewing the underlying trial court opinion may help to better understand the *Hayes* ruling and
 24 its impact. As the trial court held in *United States v. Hayes*, 377 F. Supp. 2d 540, 541 (N.D. W.Va. 2005),
 25

26
 27 ³ Nowhere in the *Hayes* ruling is there any mention of discovery at all. The majority opinion
 28 instead focuses on the use of specific words and punctuation, as well as the legislative history behind the
 federal definition of “misdemeanor crime of domestic violence” as that phrase is defined in 18 U.S.C. §
 921(a)(3)(A).

1 whether a predicate offense qualifies as a misdemeanor crime of domestic violence “is a question of law
 2 rather than a separate and essential element of a 922(g)(9) violation.” Citing *United States v. Gaudin*, 515
 3 U.S. 506 (1995) and *United States v. Booker*, 543 U.S. 220 (2005), the trial court added that the Sixth
 4 Amendment “gives a criminal defendant the right to have a jury determine, beyond a reasonable doubt,
 5 his guilt of every element of the crime with which he is charged … and ‘any particular fact that the law
 6 makes essential to his punishment.’” *Id.* (emphasis added).⁴ The lower court also recognized that, in the
 7 context of an enhanced sentencing provision of the Armed Career Criminals Amendment Act of 1986,
 8 the Sixth Amendment “requires a sentencing court to ***limit itself to examining the statute of conviction,***
 9 ***charging document, plea agreement, plea transcript and any explicit factual finding by the trial judge***
 10 ***to which the defendant assented*** in determining whether a prior offense is a felony for enhancement
 11 purposes.” *Id.* (citing *Shepard v. United States*, 544 U.S. 13, 16 (2005)) (double emphasis added).

12 The Fourth Circuit reversed, holding that to qualify as a misdemeanor crime of domestic violence,
 13 the predicate offense must have as an element a domestic relationship. *United States v. Hayes*, 482 F.3d
 14 749 (4th Cir. 2007). The government petitioned for certiorari, and the Supreme Court reversed. *Hayes*,
 15 555 U.S. at 429-30. But the Court’s decision did not cast doubt on the trial court’s application of
 16 *Shepard*, *Gaudin*, or *Booker*. On the contrary, the Court’s decision does not even discuss its rulings in
 17 *Gaudin* and *Booker*. And the only mention of *Shepard* is by the dissent, which warns that the majority
 18 opinion requires juries and courts to look at the particular facts of a prior conviction rather than the
 19 elements of the predicate offense. *Id.* at 436 (Roberts, C.J., dissenting). But because *Shepard* remains
 20 good law, such inquiries are still limited to “the statute of conviction, the charging document, plea
 21 agreement, plea transcript, and any explicit factual finding by the trial judge.” See 544 U.S. at 16. Indeed,
 22 a key distinction can (and should) be drawn between looking “at the particular facts of a prior conviction”
 23 and trying to establish *new facts* not contained in the record of the predicate offense, as Garland is
 24 attempting to do here.

25

26 ⁴ Ultimately, the district court denied Hayes’ motion to dismiss, as the evidentiary limits apply to
 27 *judicial* fact-finding, not findings of fact made by a jury, and they do not apply when the government is
 28 being put to its burden of proof at trial. *Hayes*, 377 F. Supp. 2d at 542-43. In *Hayes*, the government
 sought to criminally prosecute Hayes under sections 922(g)(9) and 924(a)(2), while this case concerns a
 civil claim brought under section 925A.

1 Following its decision in *Hayes*, the Supreme Court continues to uphold *Shepard* as good law. For
 2 example, in 2013, the Court explained that a hypothetical the Court raised in *Taylor* had become real,
 3 forcing the Court to address the issue in *Shepard*. *Descamps*, 570 U.S. at 262 (citing *Taylor*, 495 U.S. at
 4 261-62) (discussing *Taylor*'s hypothetical “statute with alternative elements—more particularly, a
 5 burglary statute (otherwise conforming to the generic crime) that prohibits ‘entry of an automobile as
 6 well as a building’” that would justify the application of the “modified categorical approach”). In
 7 *Descamps*, the majority discussed with approval *Shepard*'s holding that, when reviewing convictions
 8 based on divisible criminal statutes, courts may review only ““a restricted set of materials—here, “the
 9 terms of a plea agreement or transcript of colloquy between judge and defendant”—to determine if the
 10 defendant had pleaded guilty” to a predicate offense. *Id.* (quoting *Shepard*, 544 U.S. at 26).

11 The Ninth Circuit has likewise continued to hold that *Taylor*'s categorical approach is to be used
 12 when determining whether a predicate offense qualifies as a misdemeanor crime of domestic violence
 13 under federal law. *See, e.g., Fernandez-Ruiz v. Gonzales*, 466 F.3d 1121 (9th Cir. 2006) (applying the
 14 categorical approach in the context of the federal Immigration and Nationality Act). But when the
 15 predicate offense does not define a categorical crime, the Ninth Circuit has applied the “modified
 16 categorical approach.” *Id.* at 1132 (citing *Penuliar v. Gonzales*, 435 F.3d 961, 966 (9th Cir. 2006); *Ruiz-*
 17 *Morales v. Ashcroft*, 361 F.3d 1219, 1222 (2004)). Under this approach, courts may still consider only “**a**
 18 **limited, specified set of documents**—including ‘the state charging document, a signed plea agreement,
 19 jury instructions, guilty pleas, transcripts of a plea proceeding and the judgment’ ... [which] show the
 20 petitioner’s conviction entailed an admission to, or proof of, the necessary elements.” *Id.* (citing
 21 *Hernandez-Martinez v. Ashcroft*, 343 F.3d 1075, 1076 (9th Cir. 2003)) (double emphasis added).⁵

22

23

24 ⁵ The Fourth Circuit has likewise held this categorical approach as appropriate post-*Hayes* to
 25 determine whether a prior conviction renders a person prohibited under 18 U.S.C. § 922(g)(9). *United*
 26 *States v. Vinson*, 794 F.3d 418 (4th Cir. 2015) (citing *United States v. Castleman*, 572 U.S. 157, 168
 27 (2014). Courts may apply a modified categorical approach where the underlying state crime ““consists of
 28 multiple, alternative elements creating several different crimes, some of which would match the generic
 federal offense and others that would not.”” *Id.* (citing *Omargharib v. Holder*, 775 F.3d 192, 197 (4th Cir.
 2014)). But even then, this approach permits a court to “examine *a limited class of documents* to
 determine which of a [crime’s] alternative elements formed the basis of the defendant’s prior conviction.”
Id. at 421-22. (citing *Descamps*, 570 U.S. at 262-63).

Even before *Hayes*, the Ninth Circuit issued rulings in line with the Supreme Court's decision but still within the bounds established by *Taylor* and *Shepard*. For example, in *Corona-Sanchez*, the Ninth Circuit held that *Taylor* allows a court "to go beyond the mere fact of conviction" and "examine the record for 'documentation or judicially noticeable facts that clearly establish that the conviction'" is a predicate offense. *United States v. Corona-Sanchez*, 291 F.3d 1201, 1211 (9th Cir. 2002), superseded by statute on other grounds as stated in *United States v. Orozco-Orozco*, 94 F.4th 1118 (2024).⁶ Similarly, in *Nobriga*, the Ninth Circuit addressed whether a Hawaii conviction established the domestic relationship required to satisfy the federal definition of a misdemeanor crime of domestic violence. *Nobriga*, 408 F.3d 1178, superseded on other grounds by *United States v. Nobriga*, 474 F.3d 561 (9th Cir. 2006). The district court in *Hayes* expressly notes how the Ninth Circuit held that the *Nobriga* district court "plainly erred when it relied on a police report and a plea colloquy to determine that a misdemeanor crime of domestic violence had been committed." *Hayes*, 377 F. Supp. 2d at 542. This is important here since the Supreme Court opinion in *Hayes* never casts doubt on this reasoning.

In short, Supreme Court and Ninth Circuit precedents limit what courts may consider when determining whether a predicate offense triggers a relevant federal prohibition or statute. Those precedents have no bearing on the Supreme Court's ruling in *Hayes*, which focused exclusively on whether the domestic relationship of a predicate offense needs to be a defining element of the offense. *Hayes* makes clear that a domestic relationship need not be a defining element of the state-court conviction, and Brinson does not challenge this. But what facts a court may consider when determining

⁶ In deciding *Hayes*, the Supreme Court expressly noted that the Fourth Circuit decision was an outlier among other circuits, creating a circuit split with all nine other circuits that had already published opinions on the matter. *Hayes*, 555 U.S. at 419. Expressly mentioned here is the Ninth Circuit's opinion in *Belless*, which held that the federal statute does not require the predicate offense to have the domestic relationship as an element of the offense. *United States v. Belless*, 338 F.3d 1063, 1067 (9th Cir. 2003), abrogated on other grounds by *Castleman*, 572 U.S. 157. Notably, *Belles* held that the record, under a modified categorical approach, serves as a predicate offense and expressly cited *Taylor*. *Id.* at 1069. As expressly stated in *Belles*, "[a]lthough the Wyoming battery statute need not include a domestic relationship as an element of the crime in order for a conviction under it to serve as a predicate offense for a conviction under the federal firearms statute, it encompasses less violent behavior than the requisite use or attempted use of physical force and thus is too broad to qualify as a "misdemeanor crime of domestic violence." *Id.*

1 whether the prohibition under 18 U.S.C. § 922(g)(9) applies are limited to the statute of conviction,
 2 charging document, plea agreement, plea transcript, and any explicit factual finding by the trial judge to
 3 which the defendant assented. *Shepard*, 544 U.S. at 16. Any other documents or evidence that Garland
 4 seeks to obtain through discovery cannot be considered, making any such discovery irrelevant and
 5 unwarranted.

6 **III. RES JUDICATA AND ESTOPPEL PROHIBIT THE GOVERNMENT FROM RELITIGATING BRINSON'S
 7 RELATIONSHIP PREVIOUSLY DECIDED BY THE CALIFORNIA COURT**

8 28 U.S.C. § 1738 obligates federal courts to give the same preclusive effect to a state court
 9 judgment as the courts of the state that render the judgments, which by extension include the doctrines of
 10 collateral estoppel and res judicata. When faced with a state court judgment relating to an exclusively
 11 federal claim, a federal court must first examine the state's laws to determine the preclusive effect of the
 12 judgment. *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367 (1996) (overturning a Ninth Circuit
 13 opinion that declined to evaluate the preclusive effect of a Delaware state court judgment). In California,
 14 criminal cases can have collateral estoppel effects on civil cases. For example, the doctrine of collateral
 15 estoppel precludes relitigating an issue in a civil case previously decided in a criminal motion to
 16 suppress. *McGowan v. City of San Diego*, 208 Cal. App. 3d 890, 894 (1989). In *McGowan*, the state
 17 appellate court relied, in part, on a California Supreme Court holding that "any issue necessarily decided
 18 in a prior criminal proceeding is conclusively determined as to the parties if it is involved in a subsequent
 19 civil action." *Teitelbaum Furs, Inc. v. Dominion Ins. Co.*, 58 Cal. 2d 601, 607 (1962).

20 Under these well-established doctrines, Garland is prohibited from relitigating the matter of
 21 Brinson's relationship to the alleged victim. As noted above, the prosecutor charged Brinson with a
 22 violation of Penal Code section 243 and expressly labeled Brinson's relationship a "dating relationship."
 23 Compl. ¶ 31; *see also* Ex. A. The record thus conclusively establishes that Brinson's relationship was not
 24 any of the other types of relationships identified in section 243, including that of a spouse, a person who
 25 is the parent of Brinson's child, cohabitant, noncohabitating former spouse, fiancé, or fiancée. Notably,
 26 these other relationship classifications fully encompass the possible categories of relationships that are
 27 relevant in determining whether the predicate offense is a misdemeanor crime of domestic violence under
 28

1 federal law.⁷

2 Nor do the doctrines of collateral estoppel or res judicata, applied here, contradict or conflict with
 3 the Supreme Court's decision in *Hayes*, which focused exclusively on whether a predicate offense
 4 requires a domestic relationship as a defining element. 555 U.S. at 426. If allowed to relitigate the issue,
 5 Garland would not simply be attempting to shore up the record but supplant it to avoid liability here.⁸

6 **IV. BECAUSE THERE IS NO GENUINE DISPUTE THAT BRINSON'S 1997 CONVICTION DOES NOT BAR
 FIREARM POSSESSION, BRINSON HEREBY MOVES FOR SUMMARY JUDGMENT**

8 Brinson hereby moves for summary judgment because there is "no genuine dispute as to any
 9 material fact . . . and [Plaintiff] is entitled to judgment as a matter of law." Fed R. Civ. P. 56(a); *see also*
 10 *Celotex Corp v. Catrett*, 477 U.S. 317, 323-24 (1986). Brinson's criminal conviction has been fully
 11 litigated. The nature of his relationship with the alleged victim was established as a matter of record.
 12 Supreme Court and Ninth Circuit precedent make clear this Court may only consider a limited set of
 13 documents and facts to determine whether his conviction qualifies as a predicate offense meeting the
 14 definition of "misdemeanor crime of domestic violence" under 18 U.S.C. § 921(a)(33)(A). Here, those
 15 underlying documents and facts leave no genuine dispute that Brinson's relationship to the alleged victim
 16 of the 1997 conviction was a "dating relationship" that does not trigger a federal prohibition.

17 As previously recognized by this Court, United States Attorney Finch acknowledged Brinson's
 18 1997 conviction did not constitute a misdemeanor crime of domestic violence. His determination was
 19 confirmed by United States Attorney Drew Crislip. In both cases, these determinations were made with
 20 the express knowledge of the Supreme Court's decision in *Hayes* as raised by Brinson's prior attorney in
 21 his communications on Brinson's behalf.

22 Setting aside the above, there is no genuine dispute that when Brinson was denied his attempted
 23 firearm transfer in November 2018, Garland did not have any legitimate justification to deny Brinson's

25 ⁷ What's more, the recent amendment to the federal definition of misdemeanor crime of domestic
 26 violence now also expressly includes "dating relationships," making any argument that Brinson's
 27 relationship was something other than a "dating relationship" disingenuous and otherwise erroneous.

28 ⁸ Notwithstanding res judicata and collateral estoppel, any compelled discovery sought by Garland
 in the form of interrogatories, depositions, or testimony of Brinson will raise significant Fifth Amendment
 concerns, which likely can only be fully evaluated based on what discovery Garland seeks.

1 attempted purchase. The police report that Garland relies on as a basis to now seek discovery is not
 2 among the types of documents this Court may consider in determining whether Brinson's conviction
 3 triggers a federal prohibition, nor would any potential evidence that Garland seeks to obtain in discovery.
 4 *Shepard*, 544 U.S. 13. As further noted in this Court's July 7, 2023, order denying Garland's motion to
 5 dismiss, the reports on which Garland now relies on are inadmissible hearsay under rule 801 of the
 6 Federal Rules of Evidence. Order Re Def. Garland's Mot. to Dismiss 7. This Court also declined to
 7 incorporate by reference or judicially notice that same report, in part because the cases on which
 8 Defendant Garland relied on all involved "**undisputed** facts" that were part of those documents that a
 9 court may consider. *Id.*

10 As stated in section 925A of Title 18 of the United States Code, "[a]ny person denied a firearm ...
 11 who was not prohibited from receipt of a firearm pursuant to subsection (g) or (n) of section 922, may
 12 bring an action against the United States ... for an order directing ... the transfer be approved." Because
 13 Brinson's relationship has been established as a "dating relationship" in the state court record for the
 14 1997 conviction, that conviction cannot constitute a misdemeanor crime of domestic violence within the
 15 meaning of 18 U.S.C. § 922(g)(9). As there can be no genuine dispute to this fact, Brinson is entitled to
 16 summary judgment as a matter of law.

17 CONCLUSION

18 Existing Supreme Court and Ninth Circuit precedents prohibit this Court from considering
 19 anything other than "the statute of conviction, charging document, plea agreement, plea transcript, and
 20 any explicit factual finding by the trial judge" to determine whether Brinson's 1997 conviction triggers a
 21 federal firearm prohibition under 18 U.S.C. § 922(g)(9). Because those documents and facts establish that
 22 the domestic relationship was a "dating relationship," and not some other sort of domestic relationship,
 23 the federal firearm prohibition does not apply to Brinson, and Garland is barred by res judicata and
 24 collateral estoppel from relitigating the issue.

25 ///

26 ///

27 ///

For these reasons, Brinson requests that this Court issue an order denying Garland's request for discovery and issue summary judgment for Brinson.

Dated: April 3, 2024

MICHEL & ASSOCIATES, P.C.

s/ Matthew D. Cubeiro

Matthew D. Cubeiro
Counsel for Plaintiff

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case Name: *Brinson v. Merrick, et al.*

Case No.: 22-cv-09076-JCS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

PLAINTIFF'S OPENING BRIEF RE: DISCOVERY AND STANDARD OF REVIEW

on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed April 3, 2024.

Laura Palmerin